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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,373	03/09/2004	Alain Leas	88265-74701	4476
28765	7590	06/19/2006	EXAMINER	
WINSTON & STRAWN LLP			PEARSE, ADEPEJU OMOLOLA	
1700 K STREET, N.W.			ART UNIT	
WASHINGTON, DC 20006			PAPER NUMBER	

1761

DATE MAILED: 06/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/797,373	LEAS ET AL.	
	Examiner	Art Unit	
	Adepeju Pearse	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 25-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 25-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4-1-06/3/9/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The rejection of claim 31 under 35 USC 112 first paragraph has been withdrawn.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4,8-10,25,26,28,30,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luigi Grigoli et al. (US 6235324 B1) in view of Kuehl et al. (EP 0848910 A2). The references and rejections are incorporated as cited in the previous office action.

Claims 5-7, 29, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luigi Grigoli et al. (US 6235324 B1) in view of Kuehl et al. (EP 0848910 A2) as applied to claims 1-4,8-10,25,26,28,30,32 above, further in view of Damato (EP 276333). The references and rejections are incorporated as cited in the previous office action.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luigi Grigoli et al. (US 6235324 B1) in view of Kuehl et al. (EP 0848910 A2) as applied to claims 1-4,8-10,25,26,28,30,32 above, further in view of Tanaka et al. (JP2000-118590). The references and rejections are incorporated as cited in the previous office action.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luigi Grigoli et al. (US 6235324 B1) in view of Kuehl et al. (EP 0848910 A2) as applied to claims 14,8-

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10,25,26,28,30,32 above, further in view of Selbak (US 5425527). The references and rejections are incorporated as cited in the previous office action.

Response to Arguments

2. Applicant's arguments filed 4/7/2006 have been fully considered but they are not persuasive. Applicant argues that Grigoli does not disclose a packaging sleeve formed in a shape that corresponds to the desired shape of the outer surface of the shell. However, Grigoli teaches that the frozen product is inserted into a paper cone (6) (col 2 lines 52-60). One of ordinary skill in the art would expect that a paper cone resembles the shape of the outer surface of the shell as instantly claimed by applicant.

3. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant argues that the packaging sleeve is utilized as a mold to enable formation of the confectionery cone. This function is not recited in the claim.

4. In addition applicant argues that the Kuehl reference does not disclose applying coatings on the inner surface of a cone. This limitation is not recited in the claim.

5. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The missing elements in Grigoli

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as cited in the prior office action are disclosed by the secondary references. These references are deemed proper because they disclose similar conventional products utilized for the same purpose.

6. Applicant also states that the packaging sleeve provides a number of unexpected advantages including assisting to prevent damage to and contamination of the exposed product. Grigoli also cites the same advantage as cited in the prior office action. The packaged sleeve functions as a protectant (col 2 lines 18-61, figures). These advantages are well known in the art.

Double Patenting

Claims 14,8-10,25-28,30,32 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-3,6,16,17,20 of copending Application No. 10/294,764 in view of Kuehl et al. (EP 0848910 A2). The rejection is incorporated as cited in the prior office action.

Claims 5-7, 29, 33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-3,6,16,17,20 of copending Application No. 10/294,764 in view of Kuehl et al. (EP 0848910 A2) as applied to claims 1-4,8-10,25-28,30,32 above, further in view of Damato (EP 276333). The rejection is incorporated as cited in the prior office action.

Claim 31 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-3,6,16,17,20 of copending Application No.

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10/294,764 in view of Kuehl et al. (EP 0848910 A2) as applied to claims 1-4,8-10,25-28,30,32 above, further in view of Selbak (US 5425527). The rejection is incorporated as cited in the prior office action.

Claims 1-10,25-33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-9,19-33 of copending Application No.

10/385,177 in view of Kuehl et al. (EP 0848910 A2). The rejection is incorporated as cited in the prior office action.

Claims 1-10,25-31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5,10-14 of copending Application No.

10/800,222 in view of Kuehl et al. (EP 0848910 A2). The rejection is incorporated as cited in the prior office action.

Claims 32 and 33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-5,10-14 of copending Application No.

10/800,222 in view of Kuehl et al. (EP 0848910 A2) as applied to claims 1-10,25-31 above, further in view of Damato (EP 276333). The rejection is incorporated as cited in the prior office action.

Claims 1-10,25-31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-3,7-14 of copending Application No.

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10/984,914 in view of Kuehl et al. (EP 0848910 A2). The rejection is incorporated as cited in the prior office action.

Claims 32 and 33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-3,7-14 of copending Application No.

10/984,914 in view of Kuehl et al. (EP 0848910 A2) as applied to claims 1-10,25-31 above, further in view of Damato (EP 276333). The rejection is incorporated as cited in the prior office action.

Response to Arguments

7. Applicant's arguments filed 4/7/2006 have been fully considered but they are not persuasive. The rejections and references are incorporated as cited in the previous office action and maintained for the reasons set forth above.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to n whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Peju Pearse